

REMARKS

The present Amendment is responsive to the Official Action mailed July 8, 2010, and is accompanied by a one-month extension petition to reset the deadline for responding to and including November 8, 2010. By way of this Amendment, Applicants have amended the independent claims to include the subject matter from claims that presently stand allowable if rewritten in independent form. Thus, in view of the amendments made herein, prompt notice of allowance of all pending claims is earnestly solicited. Applicants express their appreciation for this indication of allowability.

Prior to addressing the Action in question, Applicants believe that a brief discussion of this application's history is warranted. This discussion is made with M.P.E.P § 707.02 (Applications Up for Third Action and 5-Year Applications) in mind. Under this section, it is believed that this application should receive "special" treatment.

On December 23, 2003, following unremarkable prosecution, the Office issued an Official Action allowing a number of claims, objecting to other claims as being dependent on rejected base claims but indicating that such claims would be allowable if rewritten, and rejecting certain claims under 35 U.S.C. §102(b) over Matsen III (US 4,979,949). On June 14, 2004, Applicants filed a communication arguing for allowance of the rejected claims without any amendments. The Office subsequently withdrew its rejections based on Matsen III and issued new rejections based on Hauri (WO 00/00093) in another non-final Action, this one dated October 27, 2004.

Applicants responded to the Hauri rejections on April 27, 2005 with arguments, but again with no substantive claim amendments. For a still unknown reason, the Office issued a Notice of Abandonment on May 3, 2005, claiming that no response to the October 27, 2004 Action had been filed. Applicants petitioned the Office to withdraw the abandonment. On June 16, 2005 the petition was granted, thus reinstating the case.

For nearly a year and one-half no action was taken by the Office. Then, on October 20, 2006, the Office issued a restriction requirement without rejections, an indication that the rejection under Hauri was also improper. This marked the second rejection overcome without amendment.

In response to the restriction, Applicants made a provisional election while arguing that there could be no serious search burden among the claims as prosecution had been well underway, and the Office had already completed its searching. Applicants' arguments were found unpersuasive.

The Office then issued another non-final action, mailed May 4, 2007, this time rejecting certain claims under Tuke (US 6,859,661) (a clear confirmation that the Hauri rejections were improper). Applicants once again filed a response without amending the claims, arguing instead that the Tuke reference did not qualify as prior art under §102(e) as asserted by the Office. This was correct, and on March 5, 2009 the Office withdrew the rejection. This marked the third rejection withdrawn by the Office, with only a restriction intervening.

While making the withdrawal, the Office issued a double patenting rejection over another reference having common ownership. Applicants overcame this rejection by filing a terminal disclaimer on June 4, 2009.

Finally, on October 27, 2009, the Office issued an *ex parte* Quail Action terminating prosecution with an indication that all claims were allowable other than the withdrawn claims, which were withdrawn earlier pursuant to the election. Applicants' representative attempted to contact the Examiner to request an Examiner's Amendment canceling the withdrawn claims, but the requests for a reply went unanswered. Applicants therefore canceled the withdrawn claims by Amendment filed March 1, 2010 believing that such action would leave the remaining claims allowable. Yet again the Office has issued another rejection.

Examiner Anuradha, a new Examiner to this case, kindly contacted the undersigned prior to the July 8, 2010 Action being

issued to advise Applicants that the rejection was forthcoming. Examiner Anuradha's understanding of the frustration the prosecution of this application has caused is appreciated. Although no discussion as to the merits of the rejection commenced, the undersigned and Applicants express their gratitude toward Examiner Anuradha and her willingness to consider the history of this case.

In view of all of the foregoing, Applicants request allowance of all pending claims.

For completeness, Applicants note that the only rejection made in this case is a 35 U.S.C. §102(b) rejection under Taylor (US 5,630,431) for claims 43-45, 48, 50-53, 55, 57-60, 62, and 64-68. Notably, claims 43, 50, 57, and 64 are independent claims. Claims 46-47, 49, 54, 56, 61, 63, and 69-73, the remaining claims, were indicated as being allowable if rewritten in independent form to include their respective base claim and any intervening claim.

Applicants have herein amended the independent claims to include the features of dependent claims 47, 54, 61, and 71, respectively. Dependent claims 47, 54, 61, and 71 have accordingly been canceled. Given the foregoing, the claims should be in allowable condition.

Also given the foregoing, Applicants need not comment on the outstanding rejections. Not doing so, however, should not be taken as an indication that Applicants agree with the positions taken by the Examiner, or somehow have affirmed the positions. Applicants reserve the right to file one or more continuation applications for the rejected subject matter.

As it is believed that all of the rejections set forth in the Official Action have been rendered moot and the remaining claims have all been indicated as being allowable, favorable reconsideration and allowance of this application are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone Applicants' attorney

at (908) 654-5000 in order to overcome any additional objections which she might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: November 8, 2010

Respectfully submitted,
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